THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date: 30-08-2007

WRIT PETITION No. 13560 OF 2007

BETWEEN:

Vollu Padmamma

…Petitioner

And

The Superintendent of Police, Mahaboobnagar,
Mahaboobnagar District and another.

…Respondents

-
-
-
-

ORDER:

The petitioner seeks to issue a Writ of Mandamus, declaring the action of the respondents (1) The Superintendent of Police, Mahaboobnagar and (2) the Station House Officer, Amangal Police Station, Mahaboobnagar District in not taking action on the complaint dated 20-6-2007 as arbitrary, illegal and direct the respondents to act upon the said complaint and take action in accordance with law.

It is the case of the petitioner that she along with her other relatives are the owners of the agricultural lands admeasuring Ac.32-00 in Sy.Nos.653 to 670, situated at Chennampalli village, Talakondapalli Mandal, Mahaboobnagar District. There was some boundary dispute with the neighbouring ryots of the said lands and therefore, the petitioner and others filed W.P.No.7099 of 2007, seeking a direction to the Assistant Director, Survey and Land Records, Mahaboobnagar to survey and demarcate the lands by fixing boundary stones and the said writ petition was disposed of by an order dated 23-4-2007 with a direction to take action on the representation of the petitioner and others and pass appropriate orders within a

period of four weeks. Pursuant to the said order, the Assistant Director, Survey and Land Records, Mahaboobnagar, surveyed and measured the lands and fixed the boundary stones under a cover of panchanama dated 14-5-2007.

It is stated that after fixing the boundary stones, the neighbouring ryots namely Oil Satyanarayana and others removed the boundary stones and threatened the petitioner and others with dire consequences if they restored the boundary stones. Aggrieved by the said action, a complaint dated 20-6-3007 was filed before the first respondent, marking a copy to the second respondent, but the respondents have failed to take any action and therefore, they are facing serious disputes and threats to their life and also apprehending breach of peace and tranquility in the village.

The Government Pleader appearing for the respondents submits that there is no proof of filing the said representation and it is doubtful whether the said representation has been filed or not.

The grievance of the petitioner is that the respondents have failed to take any action on the complaint dated 20-6-2007. The perusal of the said written intimation goes to show that Oil Satyanarayana and five other adjoining land owners removed the stone pillars and illegally encroached into the lands of the petitioner and therefore, they are apprehending danger to their lives and accordingly requested the

respondents to enquire into the matter and take necessary action against the said persons.

I am of the opinion that in respect of the civil disputes of land, the police have no powers to take any action. In so far as the criminal offence is concerned, if any criminal offence is alleged to have been committed, it is the statutory duty of the police to register a case and investigate the same in accordance with law. If the concerned Station House Officer fails to take any action based on the written information furnished to him and in spite of coming to the conclusion that a cognizable offence has been committed, it is always open for the petitioner to file a private complaint under Section 190 read with Section 200 of Code of Criminal Procedure (in short "the Code").

In the case of **All India Institute of Medical Sciences Employees Union (Reg) through its President Vs. Union of India and others**[1], **Gangadhar Janardan Mhatre Vs. State of Maharastra**[2] and **Minu Kumari and Another Vs. State of Bihar and Others**[3]**,** the Apex Court held that when the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the

Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused.

That being the position, the writ petition is not to be entertained. In so far as the threat by the neighbouring ryots is concerned, it is the duty of the concerned police officers to provide such security. But, in view of the alternative remedy available to the petitioner, I am of the opinion that the writ petition cannot be entertained directing the respondents to register the case and investigate into the same.

The writ petition is accordingly dismissed. No order as to costs.

V.ESWARAIAH, J

Date: 30-08-2007.

Shr.

[1] (1196) 11 SCC 582

[2] (2004) 7 SCC 768

[3] (2206) 4 SCC 359